THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.19002 of 2006

19th October 2006

Between:

Palli Srinivasa Rao, S/o.P.Appala Naidu, 36 years, Master Craftsman, O/o.Senior Section Engineer (AC) Running Repair Depot, Waltair Division, East Coast Railway, Resident of Visakhapatnam.

...PETITIONER

AND

1. The Union of India, Rep.by Secretary, Ministry of Railways, Sanchalan Bhavan, New Delhi.

And three others.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.19002 of 2006

ORDER: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

The present Writ Petition is filed aggrieved by the order of the fourth respondent, dated 30.08.2006. In the said proceedings dated 30.08.2006, while proposing to impose the punishment of dismissal from service, the petitioner herein was called upon to show cause as to why the said punishment should not be imposed on him for his having secured appointment in the Railways, in the capacity of Skilled Artisan (Electric Fitter-AC) in Electrical (G) Department in AC/RRD Department, Waltair, under the ST category on production of an ST Certificate as Konda Kapu Caste (ST) and as it had been revealed by the proceedings and enquiry report of the Mandal Revenue Officer of Narasannapet that the petitioner did not belong to ST Community.

Sri Siva, learned counsel for the petitioner, would submit that unless and until the Caste Certificate, issued by the competent authority, is cancelled in accordance with the provisions of the A.P. (SC, ST & BCs) Regulation of Issue of Community Certificates Act, 1993 And Rules, 1997 ('the Act and the Rules' for brevity) and as long as the said Certificate is subsisting, it was not open for the respondents to take departmental action against any employee on the alleged ground that the Caste Certificate produced by him is not genuine. Learned counsel would submit that the only remedy available is to have the Caste Certificate cancelled in accordance with the provisions of the Act and the Rules. We find considerable force in the submission.

Sri R.S.Murthy, learned Standing Counsel, however, submits that the Tribunal has rightly rejected the request of the petitioner, since it was only a show cause notice. Learned Standing Counsel would submit that, it was always open that the petitioner to submit a reply to the show cause notice and explain to the authorities that unless and until the Caste Certificate is

cancelled under the Act and the Rules, no action can be taken against him. Learned Standing Counsel would fairly concede that as long as the Caste Certificate has not been cancelled in accordance with the provisions of the Act and the Rules, it continues to remain in force and no departmental action can be taken against the employee concerned till the said Certificate is cancelled in accordance with the provisions of the Act and the Rules and the decision has attained finality.

It is true that this Court would, normally, not interfere in proceedings under Article 226 of the Constitution of India against issuance of a show cause notice. However in cases where the show cause notice is without jurisdiction, this Court is not precluded from exercising its jurisdiction under Article 226 of the Constitution of India. Since the Caste Certificate issued to the petitioner is still subsisting and continues to remain in force, the impugned show cause notice is without jurisdiction. The impugned proceedings dated 30.08.2006 are set aside. Needless to state that this order shall not preclude the

respondents from availing the remedy available under the provisions of the Act and the Rules made there under for cancellation of the Caste Certificate issued to the petitioner.

The Writ Petition is accordingly disposed of. However, in the circumstances, without costs.

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(B.PRAKASH RAO, J)

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(RAMESH RANGANATHAN, J)

19th October 2006
RRB